

DOCTRINE OF LACHES AND ITS APPLICATION IN MALAYSIA

By

Nuarrual Hilal bin Md. Dahlan
Universiti Utara Malaysia

Abstract

In action founded on contract, limitation period plays an important part before one commences an action against the defaulting parties. The limitation period is calculated from the date of the occurrence of the cause of action viz the date when the plaintiff caused the threat against the defendant to comply with the terms and conditions stipulated in the contract entered into by them upon the failure on the part of the defendant to comply with the terms and conditions as agreed. In Malaysia the limitation period permitted for an action founded on a contract, pursuant to section 6 of the Limitation Act 1953 ('the Act'), is 6 years. However, by virtue of section 32 of the Act, even though the limitation period still subsists, when there is laches on part of the plaintiff to commence his action, his action will be defeated. Laches means, unreasonable delay which is detrimental to the rights of the defendants or the third parties. Based on this doctrine, should the remedy as prayed by the plaintiff is allowed in spite of occurrence of laches on his part, it would otherwise, with due respect and pity to the grievance and losses suffered by the plaintiff on the default of the defendant to honour his promise as agreed thereof, be unjust to the defendants or the third parties. The positions of the defendants or the third parties must have been altered, though at the outset, the defendant was the one to be blamed for the breaches of contract he committed against the plaintiff and on occurrence of this altered positions and circumstances, the remedy sought by the plaintiff is no more appropriate and just, according to the court. However, courts in Malaysia seems to have adopted different approaches in dealing with this doctrine, albeit this is statutory rights as bestowed pursuant to section 32 of the Act. Based on the author's scrutiny there is precarious and inconsistency on the application of this doctrine in the Malaysian courts. This article will examine cases which dealt with the application the doctrine of laches in contract. It is hoped through this illumination, this paper will be beneficial and will behave us to act with circumspection.

1. Introduction

In any remedial action of a contract, limitation period plays an important criteria before one commences an action against the defaulting party of the contract.¹ The provision of limitation period to enforce a contract, is found in section 6² of the Limitation Act 1953

¹ Section 6(1)(a) of the Limitation Act 1953.

² However, for specific performance of contract of sale of land contains in section 9 of the said Act.

(hereinafter referred to as 'the said Act'). By virtue of this provision, one has to commence his remedial action either in form of specific performance or claiming damages or other relief, within 6 years from the date of the accrual of cause of action, failing which his action is deemed to fail and strike out by the court.

Apart from this, at common law and as well as in the statutory provisions in the Malaysian Limitation Act 1953 (Act 254)³, there is another equitable doctrine that could affect the plaintiff's action. This doctrine is called doctrine of laches. In short, this doctrine states that if the plaintiff commences an action with unreasonable delay (laches) after the accrual of the cause of action, his action will fail.

2. Objective

The purpose of this paper is to study and observe the importance of this doctrine in actions to enforce rights of any contract entered into and to what extent does this doctrine as entrenched in the said act, being applied by courts in Malaysia.

3. The Meaning of Laches

According to Spry, what is understood with 'laches' is that, laches occurs where there is unreasonable delay on the part of the plaintiff to institute proceeding against the defendant, and on such a delay or during the course of the delay, the position of the defendant has been altered or a third party has taken any right through the defendant, a right which at the outset belonged to plaintiff, which resulted that the action taken by the plaintiff is no more appropriate and just and it would otherwise if granted by the court be unjust and would prejudice the defendant or the third party.⁴

However, according to Spry, the doctrine of laches, though in the preliminary would be a good defence to the defendant, yet it also would not carry any weight for him if, the defendant had affirmed the material contract after the prejudice, it would not be unjust to grant specific performance⁵ on ground of laches, unless there is misrepresentation or other inequitable factors on part of the plaintiff which would be otherwise unjust for the court to grant the plaintiff the relief he sought for.

Based on these definitions and statements, what is clear to us is that, the plaintiff must commence his action against the defendant in reasonable speed and as expedient as possible or at least with a reasonable delay and he should not delay his action unreasonably, during which, there might be, due to this unreasonable delay, that the defendant or the third party has altered their position and on such an event it is unjust to grant the relief sought by the plaintiff.

³ In particular section 32 of the said Act.

⁴ Spry ICF, *The Principles of Equitable Remedies, Specific Performance, Injunctions, Rectification and Equitable Damages*, Fourth Edition. Australia: The Law Book Company Limited, 1990, p.232.

⁵ Here Spry gave an example of action of specific performance. It is submitted it could also include claim for damages or other equitable reliefs.

However, on the part of the defendant, according to Spry, albeit should the defence of the doctrine of laches is in preliminary successful, the court would eventually, without hesistant, allows the relief sought by the plaintiff, provided that justice, based on circumstances, warrant them to do so.

Further question could be raised, that is, what is unreasonable delay that would cause injustice to the defendant or the third party? According to the general views,⁶ this depends on the facts of each case. The court will look into the conduct of both the plaintiff and the defendant and the circumstances of the case, before they could conclude there is laches. For examples where, the plaintiff's action would cause loss of evidence,⁷ if the property has passed through various hands and successive owners have spent money on it, an equity court will not rescind the original wrongful sale of the property, even if it be a sale by a trustee in breach of trust,⁸ where delay might cause a situation to arise where the defendant or third parties had reasonably acted to their detriment in reliance on the plaintiff's delay⁹ and where the defendant loses meanwhile access to documents of other evidence that affects substantially his ability to defend himself.¹⁰

4. What is Limitation Period?

Limitation period means a time frame which is recognized and permitted by the law, for any party, in particular the grievous party to any civil obligation, to commence action against the defaulting party who have defaulted the terms and conditions as agreed or whomever have caused injury or losses against that grievous party. This means that the grievous party must and should initiate legal action against the defaulting party who had caused the injury, losses nor breaches on him, within the permitted and stipulated time frame viz the limitation period. For example pursuant to section 6(1)(a) of the said Act, it is provided that in any action founded on a contract for example action praying for damages, specific performance or other relief or declaration based on contract, the limitation period provided for is 6 years from the accrual of the cause of action. If the legal action is taken beyond 6 years from the accrual of the cause of action, the action will not be enforceable by the court and will fail.

5. What is cause of action?

Cause of action means the reason or ground recognized by law as would render any party to have the right to sue other party viz the defaulting party. For example in contract, the cause of action occurs when a party of the contract breaches any term or condition of the contract. Thus this ensues that the grievous party of the contract having obtain the right to

⁶ Spry, I.C.F., *The Principles of Equitable Remedies, Specific Performance, Injunctions, Rectification and Equitable Damages*, Fourth Edition. Australia: The Law Book Company Limited, 1990, at p. 446.

⁷ Watt v Assets Co (1905) AC 317 at 329.

⁸ Bonney v Ridgard (1784) 1 Coz Eq Cas 145.

⁹ Watson v Commercial Bank of Australia (1879) 5 VLR (M) 36.

¹⁰ Watt v Assets Co. Ltd (1905) AC 317.

sue against the defaulting party on his breach or default and thus enabling the grievous party to claim any damages or relief so as to protect his rights nor to reinstate or compensate his injury or losses as the outright consequences arising from the breach of the term and condition of the contract committed or omitted by the defaulting party. There cannot be 'right to sue' until and unless there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that the right of the grievous party causing the breaches against the defaulting party¹¹.

6. Statutory Provision

The doctrine of laches in Malaysia, is stated in section 32 of the Act which says:

'Nothing in this Act shall affect any equitable jurisdiction to refuse relief on the grounds of acquiescence, laches or otherwise.'

It is to be noted that even section 6(6) of the Act also mentions on the importance of section 32, where it says that:

'Subject to the provisions of section 22 and 32 of this Act the provisions of this section shall apply (if necessary by analogy) to all claims for specific performance of a contract or for an injunction or for other equitable relief whether the same be founded upon any contract or tort or upon any trust or other ground in equity'

By this provision it is crystal clear that, albeit, the limitation period to commence an action, in contract,¹² is still subsisting viz still within six (6) years from the accrual of the cause of action, the institution of such an action but would be in tatters, if there is laches on the part of the plaintiff.

6.1. The Position in England on Laches

This doctrine has been applied in England. However, according to Lord Wensleydale in *Archbold v Scully*,¹³ as holding the general view that, this doctrine is applicable where there is no provision in the statute of limitation. For example, in the Limitation Act 1939 the normal six (6) year rule is not expressly applicable to claims for specific performance, thus, laches may defeat the plaintiff's claim when there has been unreasonable delay.¹⁴

¹¹ See ratio of Alauddin Mohd Sheriff J in *Padang Serai Kilang Kayu Bhd v. Khor Kia Fong & Ors*(1997) 5 CLJ 428, at p. 431

¹² Section 6(1)(a).

¹³ (1861) 9 HL 360 at p. 383.

¹⁴ Compare the position in Malaysia, where by virtue of section 6(6) of the said Act, the application of limitation period is subject to doctrine of laches as stated in section 32 of the said Act.

Apart from the above, there is an exception to the applicability of this doctrine. The exception is where the plaintiff has already taken possession under the contract and merely seeks to perfect his legal title. This happened in *Williams v. Greatrex*.¹⁵ The plaintiff/purchaser instituted proceeding, to force the defendant/vendor to perfect the legal title of the land purchased, in which transaction the equitable interest of the land and possession of it has been passed to the plaintiff, after a delay of ten (10) years. The defendant raised the issue of 'too much delay' on the part of the plaintiff to commence the action. However, Lord Denning upheld the plaintiff's contention in that he has taken possession of the land. However, it is submitted that this could be reconciled because, in England for action of specific performance there is no provision for limitation period. Thus, it is logical that the rule of equity plays their part. Furthermore, if the court would invoke its inherent power to grant any order which is just for the parties in the event that no specific provision available for the court to look for.

6.2. The Position In Malaysia on Laches

Though this doctrine has been provided in the said Act, yet ironically and it is submitted, it has been rebuffed and not been applied satisfactorily in Malaysia, buttressed by considerable decided cases. First and foremost, the courts in Malaysia in some cases, seem to apply the only test that is, whether the action of the parties is commenced within the limitation period. If the commencement of an action is made within the period allowed by limitation, no matter when the commencement is made after the accrual of cause of action, the action still is valid and enforceable. This application, it is submitted, clearly disregard sections 6(6) and 32 of the Act.

Based on the author's scrutiny, the application of the doctrine of laches in Malaysia is rather mixed, precarious, in state of flagrant defiance of its true concept and does not seem to be in uniformity. It is submitted that there are two categories of cases:

- a. Cases where the court does not take heed of the doctrine of laches; and,
- b. Cases where the court does take heed of the doctrine of laches

6.2.a. Cases where the court does not take heed of the doctrine

The Malaysian approach of stressing the allowed limitation period and pay no heed of the importance of section 32 of the Act was clearly illustrated in several cases. In this respect, for example, in an action for specific performance of a contract of sale of land, the limitation period provided in pursuance to section 9 of the said Act is twelve (12) years from the accrual of cause of action. If the plaintiff commences the action exactly on the last day of the 12th year, his action is still recognized by the court and enforceable, regardless whether there is laches on his part to institute such proceedings. Below are some of the cases, where the court does not observe the doctrine.

¹⁵ (1957) 1 WLR 31. Similarly in *Edwards v Edwards* (1965) VR 486 and *Mehmet v Benson* (1965) 113 CLR 547.

Table 1

No.	Cases	Date of the Contract	Cause of Action Occurred (COA)	Commencement of The Legal Action
1.	Munah v Fatimah ¹⁶	1946	Not stated in the law report but it must be between year 46' and 65' because there were insistence and request by the plaintiff to the defendants to affect due transfer of the land to the plaintiff	9/65 – the action was taken after 19 years of the agreement
2.	Kersah La'usin v Sikin Menan ¹⁷	9/40	2/64 (date of writ of summon and defence – regarded as the date of COA)	2/64 – the action was taken after 24 years from the date of the agreement
3.	Itam binti Saad v Chik binti Abdullah ¹⁸	29/5/48	Not stated – but most probably in 1964 because the plaintiff had exerted his rights against the defendant in that year	In 1964 – the action was taken after 16 years of the agreement
4.	Tan Shiang Shong v Tan Lee Choon & Anor ¹⁹	31/1/51	Not stated	In 1972 – the action was taken after 21 years of the agreement
5.	Tan Swee Lan v Engku Nik Binti Engku Muda & Ors ²⁰	12/4/58	2/3/70	16/4/70 ie 1 ½ month after COA and after 12 years of the agreement
6.	Nasri v Mesah ²¹	5/6/47	30/9/49	3/3/67 ie nearly 18 years after COA and after 20 years of the agreement

¹⁶ (1968) 1 MLJ 54.

¹⁷ (1966) 2 MLJ 20.

¹⁸ (1974) 2 MLJ 53

¹⁹ (1985) 2 MLJ 369

²⁰ (1973) 2 MLJ 187.

²¹ (1971) 1 MLJ, 32.

7.	Ng Moh v Tan Bok Kim and Swee Lan ²²	30/12/50	30/4/55	16/9/65 ie more than 10 year from COA and after 20 years of the agreement
8.	Peng Bee Sdn. Bhd. v Teoh Liang Teh & Ors ²³	11/8/80	7/6/82	13/1/95 ie after nearly 13 years after COA and 15 years after the agreement
9.	Ponnusamy & Anor v Nathu Ram ²⁴	8/44	1/10/49	1/12/56 ie nearly 7 years from COA and after 12 years of the agreement
10.	Chee Hock Lai v Tan Swee Thai & Ors ²⁵	3/6/49	1983	1983 – the action was taken after 34 years of the agreement

Grounds that doctrine of laches were not applicable in these cases

The grounds are highlighted below

Table 2

No.	Cases	Reasons
1.	Munah v Fatimah ²⁶	The plaintiff had acquired the possession of the land and had enjoyed therefrom since the payment of the price of the land had been made although actual transfer of ownership is yet be effected by the vendor. No matter when did the plaintiff take the action, once the possession is taken, his action survives based on equity
2.	Kersah La'usin v Sikin Menan ²⁷	Similar to the above
3.	Itam binti Saad v Chik binti Abdullah ²⁸	Similar to the above

²²(1969) 1 MLJ, 46.

²³(2001) 1 MLJ 1.

²⁴(1959) MLJ 86.

²⁵(1990) 3 MLJ 477.

²⁶(1968) 1 MLJ 54.

²⁷(1966) 2 MLJ 20.

²⁸(1974) 2 MLJ 53

4.	Tan Shiang Shong v Tan Lee Choon & Anor ²⁹	The court had not adjudicated laches in this case but the action was statute barred as it was made after 21 years from the date of the contract was entered into
5.	Tan Swee Lan v Engku Nik Binti Engku Muda & Ors ³⁰	The court had not discussed issue on laches
6.	Nasri v Mesah ³¹	Similar to the above
7.	Ng Moh v Tan Bok Kim and Swee Lan ³²	Similar to the above
8.	Peng Bee Sdn. Bhd. v Teoh Liang Teh & Ors ³³	Similar to the above
9.	Ponnusamy & Anor v Nathu Ram ³⁴	Similar to the above
10.	Chee Hock Lai v Tan Swee Thai & Ors ³⁵	The purchaser had the equity to remain on the land which he had taken possession since the date of the contract but the title of the land was yet registered under his name. His action was to cause the vendor to execute due transfer of the land unto his name. The long period of time and the delay did not barred nor affected his right to pursue the action.

There are a few scrutiny which could be made from the above cases.

- a. The plaintiff's action would not be in tatters even though the limitation period has lapsed or there is laches on part his part as long as he had taken possession of the land, following *Williams v Greatex*.³⁶ This was held and

²⁹ (1985) 2 MLJ 369

³⁰ (1973) 2 MLJ 187.

³¹ (1971) 1 MLJ, 32.

³² (1969) 1 MLJ, 46.

³³ (2001) 1 MLJ 1.

³⁴ (1959) MLJ 86.

³⁵ (1990) 3 MLJ 477.

³⁶ However, this policy could be argued, in that the decision is made following the decision in *Williams v Greatex*, a case originated from England based on common law (as then in England, there was no statutory provision dealing with the issue in question). This, it is submitted contrary to section 3 (1)(a) of the Civil Law Act 1956, which stresses that, 'provided that in the absence of any written provision in Malaysia the courts shall in West Malaysia or any part thereof, apply the common law of England and the rules of equity as administered in England on the 7th day of April, 1956'. This means that, provided that there is no written provision dealing with the limitation period on the action of specific performance in the contract of sale and purchase of land and on the doctrine of laches relating on the same, the court shall apply the common law of England and rules of equity as administered in England as on 7th day of April, 1956. Now, on 7th day of April, 1956, Limitation Ordinance had been passed and enacted which had provided provisions for limitation period for the specific performance of sale and purchase of land and the doctrine of laches. Thus, the court's policy, it is submitted, this did not comply with the spirit and requirement of section 3 of the Civil Law Act 1956. Further, it can be argued that the policy of the court to have followed the decision in *Williams v Greatex* was unconstitutional. This is because by virtue of article 160 of the Federal Constitution 'laws' to be applied in Malaysia are written law, common law to such

propounded in *Munah, Kersah La'usin, Nasri v Mesah, Ng Moh v Tan Bok Kim and Swee Lan* and *Itam binti Saad* and *Chee Hock Lai*. However, we should bear in mind that the position in England is quite different from Malaysia, in that, in England there is no limitation period provided for an action for specific performance as opposes to Malaysia, whereby by virtue of section 9 of the said act, the limitation period for an action of specific performance for the recovery of land is 12 years. Equitably therefore, regardless whether the limitation period has lapse as long as there is possession of the land by the purchaser/plaintiff, his action still survives;

- b. Apart from possession³⁷ by the plaintiff of the land which negates defence of limitation and laches, in *Munah, Kersah La'usin* and *Itam binti Saad* it is submitted, the defence may fail. This is because, from the facts of the cases, there was nothing which had altered the defendant's position or right which virtually would justify the court to allow the defence of laches. Therefore, on this ground alone, it is doubtful that, the defence of laches would be tenable; and,
- c. Other than cases involving possession of land after due payment of the purchase price have been made by the purchaser, it is submitted that the doctrine of laches should have been raised and decided by the court in *Tan Shiang Shong, Tan Swee Lan, Nasri, Ng Moh, Peng Bee* and *Ponnusamy*. This suggestion is further illustrated and shown in the schedule below:

extent it is enforceable in Malaysia or in any part thereof, and any adat or usages which are enforceable in the Federation or in any part thereof. The written law on this issue was Limitation Ordinance 1953. The court must apply the provision in the Ordinance and not to apply the common law's decision as in *Williams v. Greatex*. This was because the Ordinance was the written law available in Malaysia. As long as the written law dealing with the issue in question is available, the court are barred from applying the common law (decision in *Williams v Greatex*) pursuant to section 3(1)(a) of the Civil Law Act 1956. It is submitted also that even though article 160 of the FC states one of the laws to be applied is common law. The application of the common law is restricted by section 3(1)(a) of the Civil Law Act 1956. Alternatively, article 4(1) of the Federal Constitution states that any law which is passed after Merdeka day which is inconsistent with the Constitution is void. It is submitted that the policy of the court to have applied the law which was decided in *Williams v Greatex* in the Malaysian cases was inconsistent with section 3(1)(a) of the Civil Law Act 1956 and thus indirectly inconsistent with article 160 of the Federal Constitution and thus become void and unconstitutional pursuant to article 4(1).

³⁷ However, in *Tan Swee Lan* as opposes to *Munah, Kersah La'usin* and *Itam binti Saad*, the issue of possession of land was not the reason on which the court disallowed defence of limitation or laches. This is because, as long as the plaintiff's action is made within the limitation period, his action is enforceable. The purchaser must have entered into a contract of sale with the vendor and had paid money to the vendor, before he could claim specific performance. The payment need not be in full as in *Tan Swee Lan* and *Ng Moh v Tan Bok Kim & Anor*. Compare with *Nasri v Mesah*, where the purchase price had been paid in full.

Table 3

No.	Cases	When the Doctrine of laches should have been raised and adjudicated upon
1.	Tan Shiang Shong v Tan Lee Choon & Anor	Apart from limitation period, doctrine of laches also may be raised because there was delay of 21 years from the date of the contract for the plaintiff to take action
2.	Tan Swee Lan v Engku Nik Binti Engku Muda & Ors	Laches may be pleaded between the date of the contract (12/4/58) and the date of the cause of action (3/3/80) nor between the date after the cause of action (3/3/70) and the date of the action taken (16/4/70)
3.	Nasri v Mesali	Laches may be pleaded between the date of the cause of action and the date of the action taken, although the limitation period still subsists and between the date of the agreement and the date of the cause of action
4.	Ng Moh v Tan Bok Kim and Swee Lan	Similar to the above
5.	Peng Bee Sdn. Bhd. v Teoh Liang Teh & Ors	Laches may be pleaded between the date of the cause of action (7/6/82) and the date when the action was commenced (13/1/95) and between the date of the agreement and the date of the cause of action
6.	Ponnusamy & Anor v Nathu Ram	Laches may be pleaded between the date of the cause of action (1/10/49) and the date when the action was commenced (1/12/56) and between the date of the agreement and the date of cause of action

6.2.b. Cases where the court does take heed of the doctrine of laches

The cases are illustrated below.

Table 4

No.	Cases	Occurrence of Laches
1.	M Ratnaval v S Lordenadin and M Mahadevan v S Lordenadin ³⁸	There was unreasonable delay (laches) of 14 months from the date of the cause of action and a delay of 5 years on part of the plaintiff to lodge caveat

³⁸ (1988) 2 MLJ 371

2.	Faber Merlin (M) Sdn. Bhd v. Lye Thai Sang & Anor and Tan Kim Chua Realty (M) Sdn. Bhd. Lye Tahi Sang & Anor ³⁹	There was a delay of 5 years on part of the plaintiff to commence the legal action. Even though the plaintiff had known the acts of the defendant were contrary to the contract, yet the plaintiff did nothing until 5 years later
3.	Goh Keng How v. Raja Zainal Abidin bin Raja Hussin & Anor ⁴⁰	There was delay for almost 30 years on part of the plaintiff to transfer the land held under a trust unto the name of the beneficiary, before he commences the action to recover the same from the defendant who is a bona fide purchaser of the land in question
4.	Wu Shu Chen(Sole executrix of the estate of Goh Keng How, deceased) & Anor v Raja Zainal Abidin bin Raja Hussin ⁴¹	Similar to the above
5.	Caltex Oil(Malaya) Ltd v. Ho Lai Yoke & Anor ⁴²	There was a contention by the defendant that delay of 19 months from the notice of termination of the contract would debar the plaintiff from commencing the action. However upon scrutiny, this did not amount to laches because during that period of 19 months the parties concerned were awaiting the proper legal representative be effected and enforced, before they could be able to proceed with the case
6.	Haji Osman bin Abu Bakar v Saiyed Noor bin Saiyed Moliamed ⁴³	One of the defences of the defendant was that there was laches on part of the plaintiff before the case was instituted, in that the plaintiff failed to present for registration of the transfer within reasonable time but took about six months after the death of the vendor to do so. Ironically there was no proof that the delay had caused hardship and would thereby caused injustice to the defendant. This ensues that the defence of laches failed.

7. Conclusion

The doctrine of laches is a common law doctrine originated from the court of equity. This doctrine is well entrenched in the Malaysian Limitation Act 1953, in particular in its section 32. However, it is disheartening that the application of this doctrine is not fully

³⁹ (1985) 2 MLJ 380

⁴⁰ (1995) 3 MLJ 6

⁴¹ (1997) 2 MLJ 487

⁴² (1964) MLJ 76.

⁴³ (1952) MLJ 37

applied in Malaysia where in most of the cases, the courts, with due respect, pay scant regard to this doctrine and its application. This would, in the result cause the course of justice be deflected. It would otherwise, if the doctrine is fully comprehended and the application of this doctrine is well applied, be a good defence for the defendant (or in some cases for the plaintiff). In summary, few observation and suggestion, could be made and recapitulated from the scrutiny of the above cases.

- a. The mere raising of the defence of laches by the defendant is insufficient (sometimes the plaintiff). In order to succeed in the defence of laches, the defendant (sometimes the plaintiff) must prove that his positions have been altered and the laches committed by the plaintiff has caused hardship on the defendant to warrant the negation of the relief sought by the plaintiff – this has been defined by the judicial committee in *Lindsay Petroleum Company v Hurd*,⁴⁴ ICF Spry and Peh Swee Chin J in *Cheak Kim Tong & Anor v Taro Kaur*.⁴⁵ and,
- b. Defence of laches is still available and is an untrampled defence, even though the limitation period is still subsisting pursuant to section 6(6) and 32 of the said act for the defendant (or the plaintiff). This mean that, albeit the limitation period still subsists, the plaintiff's (or the defendant's) action could still be destroyed if in the course of the delay there is laches on his part⁴⁶

It is hoped that the illumination of the doctrine of laches and its defect in application in Malaysia, as shown in this writing could be beneficial to us and this will belove us to act with circumspection.

⁴⁴ (1874) LR 5 PC 221

⁴⁵ (1989) 3 MLJ 252.

⁴⁶ However in *Bank Bumiputra Malaysia Berhad v Fu Lee Development Sdn. Bhd. (Rukayah bt Julai @ Rokayah as Intervener)* (1992) 1 AMR 43, which involved action for recovery of money secured by a charge on land must be made within twelfth (12) years from the date when the right to receive the money accrued, pursuant to section 21(1) of the Limitation Act 1953 (Act 254) where in it was held that the maxim of laches has no application to cases to which the statutes of limitation apply either expressly or by analogy. However this is easy to reconcile because nothing in the Limitation Act which qualified the application of section 21. This is different with section 6 where it is qualified by section 32 (laches) and section 22 (trust property). In *Cheak Kim Tong & Anor v Taro Kaur* (1989) 3 MLJ 252, which involved action of trespass. It was held in that case that the defence of laches would not have applied in any event for the plaintiffs should be entitled to the full statutory period before their claim became unenforceable. The judge referred to *Re Pauling's Settlement Trust, Younghusband v Coutts & Co.* (1962) 1 WLR 86 and *Tan Tuan Kiat & Anor v Pritam Singh Brar* (1987) 1 MLJ 276. It is submitted that, this decision is wrong because by virtue of section 6(6) of the Limitation Act, the application of limitation period is subject to section 32 (laches). This means that, even though the limitation period is still subsisting, if there is laches, the plaintiff's action would fail. See also the author's opinion and submission that this in contrary to section 3 (1)(a) of the Civil Law Act 1956 and it is unconstitutional as at foot note no. 36.